

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES MCGINTY and	:	
ROSE MCGINTY	:	CIVIL ACTION
	:	
v.	:	
	:	
SUNBIRD BOAT CO., INC. and	:	NO. 96-8264
OUTBOARD MARINE CORP.	:	

MEMORANDUM ORDER

Plaintiffs purchased from defendants a 1995 Sunbird Odyssey 210 boat which proved to have several defects. Plaintiffs thereafter initiated this action asserting claims against defendants under the Magnuson-Moss Warranty Act, the Pennsylvania Uniform Commercial Code and the Pennsylvania Unfair Trade Practices and Consumer Protection Law. The case ultimately settled for an exchange of plaintiffs' defective boat for a comparably equipped 1998 boat.

Presently before the court is plaintiffs' petition to recover counsel fees and costs as the prevailing party in this action.¹

Plaintiffs have the burden of showing that their fee request is proper and supported by evidence of hours reasonably

¹ The Magnuson-Moss Act provides:

if a consumer finally prevails in any action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses (including attorneys' fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

expended and rates reasonably charged in the particular market for the type of work performed. See Hines v. Chrysler Corp., 971 F. Supp. 212, 214 (E.D. Pa. 1997). See also Hensley v. Eckerhart, 461 U.S. 424, 433 (1983); Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990). Opposing counsel may challenge the requested fee award with specific objections. Hines, 971 F. Supp. at 214. See also Rode, 892 F.2d at 1183. The court reduces or eliminates billable hours and expenses that are "excessive, redundant, or otherwise unnecessary," and then multiplies the number of hours reasonably expended by a reasonable hourly rate to determine a presumtively appropriate award. Hines, 971 F. Supp. at 214. This is the so-called "lodestar" fee.

Plaintiffs claim that over a thirteen month period three lawyers at Kimmel & Silverman spent a total of 50.3 hours on this case and a paralegal spent another 0.6 hours on the case. Plaintiffs seek compensation for these 50.9 hours of work.

Defendants specifically challenge several hours billed by attorney Cynthia Certo.² Ms. Certo charged for 6.6 hours related to "out of office research re: UCC and Magnuson-Moss as

² Defendants generally object to the fee request on the ground that the schedule of fees and costs was prepared by Mr. Silverman, who did not have primary responsibility for the case although he worked on it. Mr. Silverman avers that he prepared the schedule after personally reviewing contemporaneous attorney notes and billing entries. Defendants also cite the unpublished Third Circuit opinion in Hilferty v. Chevrolet Motor Div. of General Motors Corp., No. 96-1540 (3d Cir. May 5, 1997) in which the Court questioned counsel's veracity regarding a billing explanation, apparently to suggest the credibility of Kimmel & Silverman is now always inherently suspect. The Circuit Court's observation was expressly based on "evidence in the record."

it applies to boats and other similar consumer products other than cars." Defendants correctly point out that the Magnuson-Moss Act simply involves "consumer products" and that Mr. Silverman certifies Ms. Certo "has handled, arbitrated and tried many automobile and boat warranty cases." The term "consumer products" in the Magnuson-Moss Act is broadly defined. Such extended research by someone who had litigated many boat warranty cases appears unnecessary. The time spent will be reduced to 2.0 hours which in any event is sufficient to ascertain the applicability of Magnuson-Moss to plaintiffs' claim and to discovery any recent pertinent boat warranty cases.

Defendants contest a 3.1 hour charge attributed to reviewing records, examining the current condition of plaintiffs' boat and meeting with "consultant boat expert." These activities were conducted by Ms. Certo at the time she was preparing to file plaintiffs complaint and appear to be reasonable activities for an attorney in preparing a boat warranty case.

Defendants challenge a 1.1 hour charge attributed to Ms. Certo for preparing arbitration exhibits and reviewing the case file to assure "accuracy and completeness." This work occurred in the midst of significant and ultimately successful settlement discussions. Nevertheless, it is reasonable for an attorney to be prepared for litigation even while pursuing settlement possibilities.

Plaintiff's requested hours will accordingly be reduced to 46.3 hours.

Counsel seek compensation at a rate of \$150 per hour and \$60 per hour for their paralegal. Defendants contend that \$100 per hour will adequately compensate plaintiffs' attorneys.³

Kimmel & Silverman have been compensated in this district for comparable work at a rate of \$150 per hour. See, e.g., Elder v. Chrysler Corp., 1997 WL 734036, *2 (E.D. Pa. Nov. 5, 1997); Hines, 971 F. Supp. at 215; Gibbs v. Hyundai Motor America, 1997 WL 325788, *2 (E.D. Pa. June 4, 1997); Holland v. Chrysler Corp., 1997 WL 256037, *3 (E.D. Pa. May 9, 1997); McLaughlin v. Ford Motor Co., 1997 WL 185942, *3 (E.D. Pa. April 14, 1997); Zarko v. Ford Motor Co., 1997 WL 189397, *2 (E.D. Pa. April 11, 1997); Anderson v. Ford Motor Co., 1997 WL 158133, *2 (E.D. Pa. April 1, 1997). Plaintiff submitted an affidavit of an experienced attorney, unaffiliated with Kimmel & Silverman, to substantiate that \$150 constitutes a reasonable market rate for the type of services performed. Defendants submitted no record evidence to refute this and the court will thus award fees at that rate. See Smith v. Philadelphia Housing Authority, 107 F.3d 223, 225 (3d Cir. 1997).

³ Defendants do not challenge the rate for the paralegal.

The loadstar amount is thus \$6,915.⁴ To this the court will add \$36 for the time expended by a paralegal and \$553.98 in costs which defendants do not challenge.

ACCORDINGLY, this day of August, 1998, upon consideration of plaintiffs' Petition for Counsel Fees and Costs (Doc. #10), and defendants' response thereto, **IT IS HEREBY ORDERED** that said Petition is **GRANTED** in that plaintiffs are awarded \$6,951 in attorney fees and paralegal expenses and \$553.98 in costs against defendants, for a total of \$7,504.98.

BY THE COURT:

JAY C. WALDMAN, J.

⁴ The court rejects defendants' suggestion that fees should be reduced because of limited success. Defendants make no showing of the relative value of plaintiffs' defective 1995 boat and their new 1998 vessel. Plaintiffs obtained an updated non-defective replacement boat. This is a substantial result and one defendants have not shown plaintiffs could have achieved with the expenditure of any less legal time and effort. The court also rejects plaintiffs' suggestion that the award should be enhanced for contingency of success. See City of Burlington v. Dague, 505 U.S. 557, 566-67 (1992).

